JUL 1 1970
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. [redacted] 200

CHRISTOPHER JACKMAN, *et al.*,

—v.—

JOHN M. BODINE, *et al.*

THE ELIZABETH DAILY JOURNAL, *et al.*,

—v.—

ROBERT J. BURKHARDT, *et al.*

STATEMENT ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY ON BEHALF OF THE SPEAKER OF THE GENERAL ASSEMBLY OF NEW JERSEY

HUGO M. PFALTZ, JR.,
Attorney for the Speaker of the General Assembly of New Jersey,
382 Springfield Avenue,
Summit, New Jersey, 07901.

BOURNE AND NOLL,
On the Brief.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

TABLE OF CONTENTS

PAGE

STATEMENT ON BEHALF OF SPEAKER OF THE GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY 1

Cases Cited

Jackman v. Bodine, 55 N. J. 371, 262 A. 2d 389 (1970) 2

Jackman v. Bodine, 53 N. J. 585, 252 A. 2d 209 (1969), cert. den., 395 U. S. 918 (1969) 3

Jackman v. Bodine, 49 N. J. 406, 231 A. 2d 193 (1967) 2

Jackman v. Bodine, 43 N. J. 453, 205 A. 2d 713 (1964) 2

Jones v. Falcey, 48 N. J. 25, 222 A. 2d 101 (1966) 3

Kirkpatrick v. Preisler, 394 U. S. 526 (1969) 4

Koziol v. Burkhardt, 51 N. J. 412, 241 A. 2d 451 (1968) 3

Reynolds v. Sims, 377 U. S. 553 (1964) 2

Wells v. Rockerfeller, 394 U. S. 542 (1969) 4

Other Authority Cited

Dixon, Democratic Representation (1968) 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1629

CHRISTOPHER JACKMAN, *et al.*,

—v.—

JOHN M. BODINE, *et al.*

THE ELIZABETH DAILY JOURNAL, *et al.*,

—v.—

ROBERT J. BURKHARDT, *et al.*

STATEMENT ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY ON BEHALF OF THE SPEAKER OF THE GENERAL ASSEMBLY OF NEW JERSEY

Statement on Behalf of Speaker of the General Assembly of the State of New Jersey

This statement is directed to a petition for writ of certiorari brought by certain petitioners against a decision

of the New Jersey Supreme Court entered on March 20, 1970 in *Jackman* v. *Bodine*, 55 N. J. 371, 262 A. 2d 389 (1970). This decision involved the districting and apportionment of the New Jersey legislature. The basis for jurisdiction, and a general statement of the case are adequately outlined in petitioners' brief.

This opinion of the New Jersey Supreme Court is the latest of a series of decisions involving New Jersey's attempts to reapportion and redistrict itself in accordance with the principle of one man—one vote. The State of New Jersey had somewhat anticipated the concepts which were enunciated in *Reynolds* v. *Sims*, 377 U. S. 533 (1964), and its companion decisions. In 1964 when these landmark opinions were decided, there was pending before the New Jersey Supreme Court an action entitled *Jackman* v. *Bodine*, which was decided by the New Jersey Supreme Court shortly after *Reynolds* v. *Sims*, and which applied the one man—one vote doctrine as interpreted by the New Jersey Supreme Court in the light of precedents established by the United States Supreme Court. *Jackman* v. *Bodine*, 43 N. J. 453, 205 A. 2d 713 (1964). The New Jersey Supreme Court recognized that the decisions of the United States Supreme Court in *Reynolds* v. *Sims*, *supra* and its related cases did not establish the final dimension of one man—one vote. Therefore, the New Jersey Supreme Court specifically reserved jurisdiction over further questions relating to legislative apportionment and districting, and it invited direct application to the New Jersey Supreme Court on future questions relating to this subject.

The control which the New Jersey Supreme Court retained on questions of proper apportionment and districting brought it into direct involvement in a number of decisions. See, *e.g.*, *Jackman* v. *Bodine*, 49 N. J. 406, 231 A. 2d 193 (1967), (ordered some restructuring of

State legislative districts), *Jackman* v. *Bodine*, 53 N. J. 585, 252 A. 2d 290 (1969), *cert. den.*, 395 U. S. 918 (1969), (ordered restructuring of State Assembly districts), *Jones* v. *Falcey*, 48 N. J. 25, 222 A. 2d 101 (1966), (approved Congressional districting), *Kozial* v. *Burkhardt*, 51 N. J. 412, 241 A. 2d 451 (1968); (approved legislative rearrangement of two Congressional districts). With the exception of *Jackman* v. *Bodine*, 53 N. J. 585, 252 A. 2d 209 (1969), *cert. den.*; 395 U. S. 918 (1969) none of the New Jersey Supreme Court decisions on apportionment and districting have been presented to the United States Supreme Court for its consideration.

Legislative apportionment and districting in New Jersey has to comply with the one man—one vote principle of the Fourteenth Amendment to the United States Constitution. The State's apportionment and districting scheme is derived from an amendment to the New Jersey Constitution which was recommended to its citizens by the bipartisan Constitutional Convention of 1966. It was duly adopted by the voters in November of that year. Parts of this 1966 constitutional amendment are quoted by petitioners under the "Constitutional and Statutory Provisions Involved" section of their brief. In addition to the quoted section the 1966 Amendment enacted Section III which established a bipartisan Apportionment Commission to carry out decennial legislative reapportionment and redistricting in New Jersey. Under the New Jersey Constitution the legislature must be reapportioned following each Federal decennial census. It is anticipated that the complete legislature will be reapportioned and redistricted in time for general elections to be held in November of 1971.

The New Jersey legislative apportionment and districting constitutional provisions are unique in that they provide an objective formula for regular legislative restruc-

turing. One commentator has called the New Jersey system "superior". Dixon, *Democratic Representation*, 339 (1968). In the past this Court has passed upon a number of legislative apportionment and districting schemes which were derived on an *ad hoc* basis solely for the purpose of a specific election. The New Jersey constitutional provisions purport to establish a formula which may be applied on an objective basis by the Apportionment Commission after each future decennial census.

It is submitted that the New Jersey legislative apportionment and districting plan complies with the one man—one vote concept, as the New Jersey Supreme Court has held during its past decisions involving various aspects of the application of the constitutional formula. However, it must be recognized that the New Jersey legislative apportionment and districting formula sanctions districts which may be as much as 20% above or below the State-wide population norm. Thus, the New Jersey Constitution authorizes a maximum deviation between districts which could be as high as 1.5:1 without requiring a complete restructuring or reapportionment of the State's legislative districts. (This significant fact has been noted in petitioners' brief at pages 5, 8, 10 and 16.)

We must acknowledge that the possible range of population deviations under the New Jersey constitutional formula is larger than actual population deviations which were struck down by this Court in *Kirkpatrick* v. *Preisler*, 394 U. S. 526 (1969) and *Wells* v. *Rockefeller*, 394 U. S. 542 (1969). However, it must also be recognized that this 20% maximum permitted population deviation under the Constitution is merely an outside limit within which the New Jersey formula may be applied without requiring a complete restructuring of legislative districts. It is not a maneuvering room within which the Apportionment Commission may draw district lines at will. All internal district lines must be drawn so as to result in the least

population deviation possible among legislative districts. This is a vital distinction between legislative apportionment and districting plans resulting from the application of the New Jersey formula and those plans which this Court has considered in the past which resulted from an *ad hoc* delineation of districts without any reference to any specific pre-established formula.

It is submitted that this Court will concur with the decisions of the New Jersey Supreme Court which have held that the New Jersey legislative apportionment formula complies with the one man—one vote mandate of the Fourteenth Amendment to the United States Constitution. The Speaker of the General Assembly of the State of New Jersey submits that there is no need for this Court to grant the writ of certiorari which has been applied for by petitioners. However, the Speaker also recognizes that there are serious unanswered Constitutional questions which underlie the New Jersey formula for legislative reapportionment, and that new problems will undoubtedly be posed as a result of the decennial census of 1970. Thus, it may be appropriate for this Court to grant this requested writ of certiorari in order to determine unresolved issues and to pass upon formula reapportionment and redistricting as one method by which the several states may meet the practical problem of implementing legislative reapportionment and redistricting in accordance with one man—one vote.

Respectfully submitted.

Hugo M. Pealtz, Jr.,
Attorney for the Speaker of the General Assembly of New Jersey.

June 28, 1970.